IN THE SUPREME COURT OF THE UNITED STATES
MARCH TERM, A. D .1944
NO. 9406

American Broach Employees Protective Association, Petitioner

vs.

National Labor Relations Board, Respondent

and

American Broach & Machine Company, Respondent

Brief in Support of Petition for Writ of Certiorari

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Attorneys for Petitioner
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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE JUDGMENT BELOW

The judgment of the United States Circuit Court of Appeals for the Sixth Circuit granted the petition of the National Labor Relations Board for enforcement of its Order (R. 165) (page 2, Additional Entries).

JURISDICTION

The Circuit Court of Appeals has, in this case, decided an important question of Federal law which has not been, but should be settled by this Court (Supreme Court Rule 38) (5) (b), and judgment was entered in this case by the United States Circuit Court of Appeals on December 17, 1943. Petition for rehearing was denied February 11, 1944. (R 2-3 of Additional Entries).

STATEMENT OF THE CASE

The American Broach Employees Protective Association is an independent Union, duly certified by the National Labor Relations Board as the sole bargaining agent for employees of the American Broach and Machine Company, Respondent, in the Court below. The National Labor Relations Board filed a complaint on behalf of the UAW-CIO and a hearing on the complaint was held in the city of Ann Arbor. Motion to intervene in the case was filed by the Petitioner. The same was granted by the Trial Examiner. Hearings were commenced on Thursday, May 28, 1942, at which time the Petitioner, American Broach Employees Protective Association, was present in the Hearing Room in order to ascertain what charges the Board's witnesses were making against them and to assist their Counsel in the cross-examination of the Board's witnesses. The American Broach and Machine Company, Respondent in the court below is engaged in vital war work. The presence of the full membership of the Association resulted in practically closing the American Broach and Machine Company shop. The War Labor Board sent a telegram ordering the Petitioner to remain on the job and stay away from the Hearing Room and be present in the Hearing

Room only when giving testimony. Counsel for the Petitioner protested that such an order from the War Labor Board had resulted in his clients being absent from the Hearing Room as a result of which he was unable to cross-examine the Board's witnesses. The Trial Examiner agreed that the Petitioner had the right to be present and promised that he would give Counsel an opportunity to have any witnesses present at the Hearing whenever Counsel felt that the presence of such witnesses was necessary. Upon the first occasion when the Board's witness started making charges against one of the Petitioner's members, Counsel for Petitioner requested an opportunity to have his client present in Court to hear the charges being made against him and to aid Counsel in refutation and cross-examination of the Board's witness. In spite of the promise of the Trial Examiner to give such opportunity the Trial Examiner denied the Petitioner such opportunity and your Petitioner was consistently denied such opportunity all through the Hearing and the Petitioner directs the Court's attention to the fact that the record fails to disclose one instance where such right was given by the Trial Examiner to the Petitioner.

ERRORS RELIED UPON

The United States Circuit Court of Appeals erred in granting the petition of the National Labor Relations Board for enforcement of its Order for the reason that the granting of such petition sanctioned the denial of due process of law to the Petitioner as guaranteed by the Constitution.

ARGUMENT

Petitioner recognizes that the rules relating to evidence are relaxed in case of administrative hearings, but it is the contention of the Petitioner that the relaxation of the rules of evidence does not mean that the Board is entitled to hold its Hearings exparte and keep away from the Hearings those persons against whom the Board is making its accusations. As was said by the Court in the case of Southern Association of Bell Telephone Employees vs. National Labor Relations Board (CCA 5) 129 F (2d) 410.

"The Board in its capacity as accuser is held to the same burdens and obligations of proof as any other litigant who takes the affirmative; it may not, by accusing, put the accused upon proof, but, as accuser, it must prove its charge; in its capacity of a trier of facts it stands on the footing of a Jury and like a Jury, it must be impartial. It must not make findings without evidence to support them, and it is for the Courts to say whether there is evidence to support." It has been one of the fundamental rights of the accused to be present in the Court room when the accuser takes the stand in order that he may hear the accusations and enable his Counsel to cross-examine the accuser. Unless such right is secured to the accused, the statement of the accuser stands unchallenged and, although it may be false in its entirety, its falsity cannot be brought to light and it thus stands as evidence upon which the Court must make its finding of sufficiency.

In the present case the evidence which the Circuit Court of Appeals has passed upon as being sufficient to sustain the Board's finding is thus tainted with the denial of due process to the Petitioner and the Petitioner submits that to sanction such proceedings on the part of the Trial Examiner is to place the Courts blessing upon the worst form of "star chamber". In the present case Petitioner was anxious to co-operate in the Hearing so as to affect the work in the shop as little as possible. Although Petitioner believes it had a right to be present in body to hear the testimony against it and its members, Petitioner consented to remain at work upon the express promise of the Trial Examiner that its Counsel would have opportunity to consult with its members at any time during the Hearing that he should feel it necessary and Counsel's request at no time was for any lengthy adjournment to enable hime to have the accused present in the Hearing Room.

In fact, not more than five to ten minutes would have been sufficient to enable the accused to come from the shop to the Hearing Room, only a few blocks intervening. In spite of this the Trial Examiner arbitrarily refused such requests by the Petitioner and consistently refused them during the full course of the proceeding.

Obviously the Trial Examiner was not interested in ascertain-

ing the truth or falsity of the statements of the Board's witnesses and just as obviously, the record in this case upon which the full Board and the Circuit Court of Appeals has passed is subject to the same objection, namely, that it cannot be an impartial and unbiased report of the proceedings in this case.

JOHN B. MELLOTT

of Counsel for Petitioner

NO. [redacted] 78

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1943

American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

and

American Broach & Machine Company, Respondent and Appellee

Petition of American Broach Employees Protective Association, Appellant above named, for an Order Staying the Execution and Enforcement of the Final Order of the Circuit Court of Appeals for the Sixth Circuit to enable said Appellant to apply for and obtain Writ of Certiorari from the Supreme Court.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1943

NO. 976

American Broach Employees Protective Association, Petitioner and Appellant

vs.

National Labor Relations Board, Respondent and Appellee

and

American Broach & Machine Company, Respondent and Appellee

Petition of American Broach Employees Protective Association, Appellant above named, for an Order Staying the Execution and Enforcement of the Final Order of the Circuit Court of Appeals for the Sixth Circuit to enable said Appellant to apply for and obtain Writ of Certiorari from the Supreme Court.

TO THE HONORABLE HARLAN F. STONE, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petioner, American Broach Employees Protective Association, respectfully presents this its application for an Order staying the execution and enforcement of the final order of the Circuit Court of Appeals for the Sixth Circuit rendered in the

above cause on the 17th day of December, 1943, under the provisions of Section 350 of Title 28 of the United States Code to enable said Petitioner to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States.

The ground upon which said petition for certiorari has been based is as follows:

1. That your petitioner was denied due process of law by the conduct of the trial examiner for the National Labor Relations Board.

The reasons why a stay is deemed necessary are as follows:

1. That your petitioner has valuable contract rights with the Respondent, American Broach & Machine Company, which rights will be irreparably lost if the Order of the National Labor Relations Board is carried into execution.

2. That the Order of the National Labor Relations Board disestablishes the petitioner as the bargaining unit for the employees, and unless said Order is stayed, your petitioner will suffer irreparable loss and injury.

3. That your petitioner has already filed its petition with this Court for a Writ of Certiorari and has acted in good faith to protect what it believes to be its constitutional rights, but all efforts of the petitioner to protect its rights before this Honorable Court will be of no avail unless a stay of execution is granted pending the proceedings in this Honorable Court.

4. That a stay of execution will in no way jeopardize, injure or cause loss to any of the parties to this controversy, whereas the refusal of this Court to grant such a stay of execution would immediately result in the forced dissolution and disestablishment of the petitioner and loss of its contractual status with the Respondent, American Broach and Machine Company.

Dated: May 24, 1944.

JOHN B. MELLOTT
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